Supreme Court, U.S.
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No. 02-485

IN THE

Supreme Court of the United States

SAM and MARIA CARDIELLO,

Petitioners,

v.

THE MONEY STORE, INC. and TMS MORTGAGE, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Respondent The Money Store, Inc. is wholly owned by First Union National Bank.

Respondent TMS Mortgage, Inc. is wholly owned by The Money Store, Inc.

The Money Store/Empire State Inc., a defendant below, was merged into TMS Mortgage, Inc.

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PREFACE

Petitioners ["the Cardiellos"] incorrectly and intemperately criticize the three Court of Appeals Judges and the District Judge who correctly concluded that they do not have a legal claim against Respondents ["The Money Store"]. The District Court thoroughly reviewed and considered the Cardiellos' contentions, and rendered a comprehensive and soundly reasoned decision that is fully consistent with the law and the facts [App. 4a-6a]. The Court of Appeals expressly adopted [App. 2a] that decision on the opinion of the District Court [App. 3a-19a], and adhered to its decision after receiving a lengthy petition for rehearing and rehearing en banc raising the same objections that the Cardiellos raise here [App. 20a-21a].[1]

In simple terms, the case is this:

The Cardiellos, borrowers on a 1985 loan from The Money Store, seek to assert a time-barred claim under the Truth-in-Lending Act and a demonstrably baseless claim against that lender under the Real Estate Settlement Procedures Act, even though The Money Store voluntarily forgave the $2,000 balance they still owed and on which the Cardiellos base their claims. The Money Store continued to believe that it was entitled to the $2,000 balance, and, in its correspondence (sent within RESPA's time requirement), explained why that amount was due. But, when the Cardiellos insisted they should not have to pay, The Money Store chose not to pursue the balance and forgave it, as a courtesy to its customer and to avoid the cost and diversion of corporate energies that a collection action would have entailed. The Cardiellos now say that was not enough. Respectfully, that is not the type of case warranting this Court's intervention, particularly in the face of the unanimous rulings below.

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1. Citations to "App." refer to the Appendix to the Petition to this Court. Citations to "2d. Cir. Jt. App." refer to the Joint Appendix in the United States Court of Appeals for the Second Circuit.

What the Petition to this Court is really about is that the Cardiellos are angry that The Money Store, believing it did no wrong, "refuse[s] to admit its error" [*see, e.g.*, Petition 17-18], i.e. did not say, in waiving the amount owed, that it agrees with the Cardiellos' version of the situation. For reasons that only they may understand, the Cardiellos do not accept the District Court's sensible conclusion, expressly endorsed by the Second Circuit [App. 15a, 2a], that "it is difficult to imagine a greater accommodation than forgiving the entire amount of a loan in dispute", as occurred here. In any event, as the Courts below found, The Money Store "went far beyond what was required" of it and "certainly" did not violate the law [App. 15a, 2a]. The Cardiellos have not presented a basis for a writ of certiorari. This Court has more important matters to address than the emotions of a disgruntled and undamaged plaintiff who wants an apology from a defendant as to whom both the District Court and Court of Appeals made such findings.

CORRECTION OF STATEMENT OF THE CASE AND FACTS

Correction of Erroneous Factual Statements

The facts are correctly summarized in the District Court's opinion, which the Second Circuit expressly adopted.

In this Court, as they did in the Second Circuit, the Cardiellos make factual allegations that are not contained in their Complaint. For example, attempting to create the misimpression that they were damaged, the Petition says that the Cardiellos are due a refund for supposedly early payments on their loan [Petition 3, 4, 7, 24]. They can give no record cite for that contention since there is no such allegation in their Complaint [cf. Complaint in 2d Cir. Jt. App., A 6 through 23]; and it is contrary to The Money Store's records, which

are in the Record [*see* discussion at App. 3a-6a]. The Cardiellos also cite a section of the Truth-in-Lending Act ["TILA"], § 1666, which they expressly abandoned below when shown that § 1666 refers only to "open-end credits" (e.g. credit cards where continuing loans are made), and *not* to "closed-end credits" (e.g. one-time mortgage loans) like that at issue here [*See* Dist. Ct. Opinion, footnotes 6 and 8, at App. 18a-19a].[2]

The Cardiellos also take improper liberties with the facts. For example, the Cardiellos state that the Federal Trade Commission "had previously found that identical practices by The Money Store in the thousands of borrower's accounts violated § 1638 of TILA" [Petition 22]. There was no such finding. The FTC proceeding was settled; and, in the settlement agreement, the FTC expressly agreed that "the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated" [2d Cir. Jt. App., A 28]. Similarly, the Cardiellos suggest that The Money Store "threaten(ed) foreclosures before investigating whether the amount [was] actually owed" [Petition 2]; whereas, The Money Store's letters to them show the opposite [2d Cir. Jt. App., A 50 through 53].[3]

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2. The distinction between a "closed-end credit" (i.e., a consummated loan, like a mortgage), and an "open-end credit" (i.e., a continuing line of credit, like a credit card) is explained in *Baskin v. G. Fox & Co.*, 550 F. Supp. 64, 66-67 (D. Conn. 1982). Sound case law, detailing the language, legislative history, administrative interpretation and purposes of § 1666, has made clear that § 1666 does not apply to closed-end credits. *Jacobs v. Marine Midland Bank*, 124 Misc. 2d 162, 475 N.Y.S. 2d 1003 (Sup. Ct. Orange Co. 1984); *Bailey v. Capitol Motors, Inc.*, 307 Md. 343, 513 A.2d 912 (Ct. App. 1986).

3. As shown below, the letters were properly part of the record on the motion in the District Court since they had been expressly referred to in the Complaint. *See* Point III *infra*.

The Cardiellos also fail to advise the Court of important facts. The crux of their claim is that The Money Store supposedly imposed charges on them for late payments of their loan. But, their Petition does not mention that they were expressly told, and agreed, that they would incur such charges if their payments were late. Thus, the TILA Disclosure Statement given to and signed by the Cardiellos at the time of their loan stated [2d Cir. Jt. App., A 58]:

> The amounts shown as the finance charge and total of payments are based on the assumption that you will pay the monthly installments when due. Late payment of the monthly installments will increase the finance charge and total of payments . . .

The Cardiellos signed the TILA Disclosure Statement, and initialed changes in it just above the quoted statement. Other contemporaneous evidence also showed that the Cardiellos knew (during the course of their loan) that they would incur additional charges for late payments [*See* Mr. Cardiello's April 1997 letter to The Money Store in 2d Cir. Jt. App., A 59-61].

Further, the Cardiellos do not advise that Court that they expressly acknowledged (in the Second Circuit) that the TILA Disclosure Statement given to them was not misleading. The Cardiellos' counsel expressly conceded that fact in his oral argument [App. 24a]:

> Judge Jacobs: . . . Are you contending that the TILA disclosure statement misrepresented what was in what was written in the underlying loan documents that —
>
> Mr. Grobman: No.

[*see also* App. 23a and 24a where the Cardiellos' counsel further acknowledged that fact].

The Cardiellos also attempt to minimize and misdescribe The Money Store's letters responding to their June 8 request for an explanation of the balance they owed. In two letters (both within the 60-day period required by the Real Estate Settlement Procedures Act ["RESPA"]), The Money Store explained the basis for the balance due [App. 5a-6a, 2a; *see also* 2d Cir. Jt. App., A 50-53]. The Money Store's June 28, 2000 letter explained, consistent with the explicit statement in the TILA Disclosure Statement quoted above, that "the actual principal owed could vary from the amount originally forecast on the disclosure statement if borrowers made late payments" [App. 5a], as the Cardiellos had done [*see also* 2d Cir. Jt. App., A 50-51]. On July 17, 2000, in a follow-up letter (also within the time prescribed by RESPA), The Money Store again explained that but then completely waived the unpaid charge; so that the Cardiellos were not required to pay anything further on their loan [App. 6a; *see also* 2d Cir. Jt. App., A 53]. As the District Court explained [App. 6a]:

> On July 17, 2000, Mr. Winterbottom mailed plaintiffs a 'follow-up' letter. Mr. Winterbottom first addressed plaintiffs' concern about being unable to locate a description of the 'simple interest' method by directing them to the description of the method found on their TILA disclosure statement and apparently enclosing a copy of the statement with the pertinent passage highlighted . . . Finally, 'in the interest of amicable customer relations', The Money Store agreed to waive the remaining balance on plaintiffs' account and release the lien on its secured property.

While the Petition now complains that the letter did not include the Cardiellos' compensation for supposed early payments [Petition 7], their June 8, 2000 letter had not contended that the Cardiellos had paid early and did not

ask for any such refund; and, even more importantly, their Complaint in this action made no such allegation or claim [cf. 2d Cir. Jt. App., A 5 and A 23].

Correction of Erroneous Statements as to Proceedings Below

The Cardiellos' Petition misdescribes and seeks to alter the claims asserted in their Complaint and presented to the District Court. Since those are the only claims properly before the Court, they are summarized here:

The Complaint asserted three types of federal law claims in four "causes of action", demanding damages for the Cardiellos and a class of persons who they contend were similarly wronged [A 9; Complaint ¶10]. Only two of the pleaded claims were pressed on appeal, viz.:

1. A claim (First Cause of Action) that the TILA Disclosure Statement that the Cardiellos received in 1985 at the time of their loan [Complaint ¶18 in 2d Cir. Jt. App., A 12] contained allegedly insufficient or inaccurate disclosures regarding their loan [¶46 in 2d Cir. Jt. App., A 17]; so that The Money Store supposedly violated TILA § 1638, 15 U.S.C. § 1638 and Regulation Z thereunder, 12 C.F.R. § 226.18 [¶46 in 2d Cir. Jt. App., A 17]. The District Court and Court of Appeals found this claim time-barred [App. 7a-12a, 2a]. As noted above, in the Second Circuit, the Cardiellos abandoned their contention that the TILA disclosure statement was misleading.

2. A claim (Second Cause of Action) that The Money Store allegedly failed to respond timely to the June 8, 2000 letter from the Cardiellos, and thus supposedly violated RESPA § 2605. § 2605 required a written response to this letter within 60 days stating *either*: (a) that The Money Store had erroneously made "prior demands for payment" but had now corrected the error; or (b) why The Money Store believed

its calculation of what was due was correct [Complaint ¶51 in 2d Cir. Jt. App., A 18]. The Courts below found, given The Money Store's June 28, 2000 and July 17, 2000 letters in response to the June 8 letter, this claim to be demonstrably baseless [App. 12a-16a, 2a]. The Cardiellos do not raise this claim in their Petition to this Court.

3. and 4. The Cardiellos also asserted (Third and Fourth Causes of Action) that The Money Store allegedly committed a billing error [Complaint ¶52 in 2d Cir. Jt. App., A 18], and wrongfully persisted in improper collection efforts in spite of it [¶¶19-20 in 2d Cir. Jt. App., A 21], supposedly in violation of TILA § 1666, 15 U.S.C. § 1666 [¶¶57, 62 in 2d Cir. Jt. App., A 19-20]. When shown that, as noted above (footnote 2 *supra*), § 1666 applies only to open-end credits not involved here, the Cardiellos dropped those claims [*see* District Court decision at App. 18a n.6].[4]

In the Court of Appeals, the Cardiellos sought to raise two other claims not pleaded in their Complaint, only one of which (raised for the first time on their motion for reconsideration) they seek to raise in this Court, viz.:

1. A new claim (first asserted in seeking reconsideration) that The Money Store's letter threatening foreclosure violated RESPA § 2605(e). This claim is premised on the incorrect allegation that, in *dicta* [App. 16a], the District Court had *sua sponte* raised a defense that The Money Store had not itself raised. What actually happened (as the District Court explained) is that, after noting that it "need not decide here what precisely would constitute" actionable wrongdoing under the statute, the District Court chose to note that "sending standard balance due demand letters alone does not

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4. The Cardiellos also asserted three state law claims. The District Court declined to exercise supplemental jurisdiction over them when it dismissed the federal claims [App. 17a]. The Cardiellos have not appealed that ruling.

constitute" a violation. Moreover, as also noted by the District Court [App. 16a], the letter upon which the Cardiellos base the claim was not one of the letters that responded to their inquiry, which are the only letters to which the statute (by its express terms) applies. That claim is not properly raised on appeal; but, even if it is, it is baseless, and certainly does not warrant review by this Court, for the reasons explained by the District Court; and

2. A claim mentioned in the Cardiellos' papers in opposition to the motion) that The Money Store violated TILA because it allegedly did not comply with its 1991 agreement with the FTC. That claim is apparently not being pressed in this Court. In any event, the claim is baseless since such a claim also would be time-barred and, in any event, involves an obligation not covered by TILA § 1638. TILA § 1638 is a disclosure statute addressing the sufficiency of the disclosures at the time of the loan, not such a post-loan contractual obligation. Moreover, as shown in the papers below, The Money Store did comply with the FTC agreement [App. 11a and 18a n.9; *see also* 2d Cir. Jt. App. A 41-48].[5]

REASONS FOR DENYING THE PETITION

A. *The Criteria for Certiorari Are Not Presented*

The Cardiellos' Petition seeks to obtain review by this Court on matters not raised in their Complaint or otherwise in the District Court. It also misstates what the Courts below held and the effect of those holdings.[6] Thus, a correction on those matters is also needed.

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5. The FTC accepted The Money Store's compliance, and has never raised a question as to it. The Money Store submitted admissible business records showing that it had complied, as the Courts below recognized [App. 11a and 18a n.9].

6. The Cardiellos also take out of context a letter by The Money Store's counsel about the District Court's opinion. Counsel's remarks

(Cont'd)

There is no conflict among Circuits. The decisions below do not conflict with or depart from established authority either in this Court or in the Circuits. The District Court and the Second Circuit did not depart from accepted and usual judicial practice. There is no important issue of federal law that needs to be resolved by this Court.

All that is involved here is the unwarranted pique of a borrower (no one else joined their action or has asserted the same claims against The Money Store) because The Money Store, in waiving its right to the money it was owed, did not also say the money was not owed. Respectfully, that is not a proper case for this Court's limited docket.

B. ***Summary of the Correctness of the Decisions Below***

In sum, the answer to the claims that the Cardiellos seek to press in this Court is:

1. The Cardiellos' TILA § 1638 claim, based on the balance they owed on their 1985 loan, was long ago time-barred.[7] Congress expressly included a one-year statute of limitations in TILA for actions under that title. The Cardiellos' Complaint does not allege that the statute of limitations should be equitably tolled, nor any facts upon which such a contention could be based. The documents referred to in the Complaint (and therefore properly considered on the motion to dismiss) showed that the Cardiellos were well aware of

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(Cont'd)

were about portions of the District Court's opinion as to which the Cardiellos are not petitioning this Court. But, in any event, such remarks would not be the test (and are irrelevant) as to whether certiorari is appropriate.

7. As noted above, the Cardiellos assert this claim even though the TILA Disclosure Statement given to them at the time of the loan expressly explained that they would incur additional charges if they made their payments late.

the underlying facts many years before this action was commenced. Further, there is no basis to equitably toll the statute of limitations. The Cardiellos made no allegation and no showing either that The Money Store affirmatively sought to mislead the Cardiellos as to facts upon which they base their claim or that the alleged wrong was "self-concealing". One of those two alternatives is required. Finally, and in any event, the Cardiellos did not plead any facts showing (as they conceded below is required for equitable tolling) that they used due diligence to learn the facts.

2. The Cardiellos' RESPA claim (alleging that The Money Store's responses to their counsel's June 8, 2000 inquiry letter were untimely and insufficient) is demonstrably baseless,[8] and apparently has been abandoned. The Cardiellos instead contend that The Money Store violated RESPA because it did not acknowledge that (as they contend but The Money Store did not agree) The Money Store was in error when it earlier asked for the balance to be paid. In doing so, the Cardiellos have mischaracterized the facts and incorrectly stated the requirements of RESPA. More to the point, as the Courts below correctly recognized, the Cardiellos are trying to enmesh defendants and the District Court in a class action over, at best, an unduly technical reading of RESPA on the theory that The Money Store's failure to acknowledge wrongdoing when it believed none had been committed is an actionable wrong — despite The Money Store's waiver of the amount due it. Under the Cardiellos' construction of RESPA, a lender who determines not to insist on payment of a small balance owed to it, but who (believing it has done no wrong) does not do a *mea culpa* when waiving the balance,

8. The Cardiellos' Complaint had based this claim primarily on the plainly incorrect assertion that The Money Store had not responded to their counsel's June 8, 2000 letter within the 60-day time period prescribed by RESPA. On appeal, they acknowledged that The Money Store did respond in a timely manner, but sought (as they do here) to recast their claim on different grounds.

should be the subject of a class action seeking to prove the point that the lender determined not to fight over. The Courts below correctly concluded that that is not an appropriate controversy for the over-burdened judicial system.

3. There also is no basis for the Cardiellos' effort to assert a new claim (first raised in their motion for reconsideration) that The Money Store's earlier standardized demand letter (i.e. before waiving the $2,000 balance), stating that it might pursue its legal remedies if the Cardiellos dishonored their contractual obligation, was itself a RESPA violation. No such claim was pleaded; and their contention as to the the statute was not raised below, is internally inconsistent, and contradicts allegations of the Complaint.

POINT I.
THERE IS NO RESPA ISSUE WARRANTING THIS COURT'S REVIEW

A. The Courts Below Correctly Construed and Applied RESPA

In their Petition, the Cardiellos abandon the RESPA claim they had raised in the District Court (i.e. the timeliness of The Money Store's responses to them), and limit their argument to their quibble with the District Court's *dicta* that the sending of a standardized collection letter was not "taking any action" in violation of the statute.

The Cardiellos misstate the statute. It states that a lender must do certain things within the following time period:

> no later than 60 days . . . after receipt from any borrower of any qualified written request . . . *and, if applicable*, before taking any *action with respect to the inquiry* of the borrower . . .

Emphasis added. [App. 53a]. The statute refers to action with respect to the *inquiry*, *not* "any action" with respect to the *loan*.

As the Courts below correctly found [App. 15a], the Cardiellos are not complaining about an action taken "*with respect to the inquiry* of the borrower". Rather, they are complaining that, *apart from* The Money Store's responses to the Cardiellos' June 8, 2000 letter, The Money Store had sent them a standardized letter saying that, if the Cardiellos did not pay what they owed, it would pursue its legal rights [App. 5a]. That letter was not a response to the Cardiellos' letter; and admittedly no steps were taken against the Cardiellos.

This is not a case where, having received a letter of inquiry, a lender hectored a borrower or otherwise acted in bad faith. Rather, barely one week later, The Money Store *did* respond to the Cardiellos' inquiry letter, reflecting that it had investigated their inquiry, explaining why the amount claimed was owing and voluntarily granting an unrequired reduction to the Cardiellos [5a; 2d Cir. Jt. App., A 50-51]. The Money Store followed that letter, also within the 60-day period, with another letter explanation and a full waiver of the amount owed [5a-5b; 2d Cir. Jt. App., A 52-53].

In any event, the Courts below reached a sensible conclusion, viz. the common sense recognition that, under these circumstances, the sending of the interim letter had nothing to do with the Cardiellos' letter of inquiry, was an innocent standard demand letter, and did not rise to the level of action.

The Cardiellos incorrectly ask the Court to engraft onto RESPA § 2605(e)(2) supposed requirements of TILA § 1666, 15 U.S.C. § 1666. TILA § 1666, referring only to open-end credits (not closed-end credits like RESPA), talks about "any *attempt to collect the disputed amount*", *not* action with respect to "*the inquiry*" of the borrower. The Cardiellos had abandoned § 1666 below [*see* App. 18a n.6]. But, in any event, it is directed at a materially different situation than that here. Indeed, the Cardiellos' Petition itself contradictorily acknowledges that "Congress used 'action' elsewhere in

§ 2605(e) to set forth the 'action' a lender must take — i.e. providing written *responses to a borrower's request for information*." (emphasis added). [Petition at 15 n.9]. The Money Store's responses *to* the Cardiellos' *inquiry* letter did *not* threaten foreclosure.

B. RESPA Does Require "Actual Damages" Here

The Money Store, as shown above, did not violate RESPA. But, in any event and in addition, the Courts below correctly also held that the Cardiellos can not assert a RESPA claim since they did not suffer "actual damages". RESPA § 2605(f), 12 U.S.C. § 2605(f)(1)(A), expressly states that an individual borrower can recover only his/her "actual damages" from a violation of RESPA [*see* App. 54a]. Statutory damages absent actual damages are permissible, under the express terms of the statute, only "in the case of a pattern" of violation of RESPA. 12 U.S.C. § 2605(f)(1)(B). The Cardiello Petition attempts to confuse and meld together these two different sections of the statute.

In the Courts below, the Cardiellos contended, incorrectly, that they did have "actual damages"; but, in their Petition to the Court, they have abandoned that incorrect contention.[9]

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9. The Cardiellos contended on the motion below that they suffered "actual damages" since they had hired an attorney; but they never pleaded such damages, and cited no support for their position. The cases they did cite refer to possible damages due to loss of a borrower's credit standing where the lender has reported the borrower's non-payment to a credit bureau [*Cortez v. Keystone Bank, Inc.*, 2000 U.S. Dist. LEXIS 5705 at *39 (E.D. Pa. 2000)] or due to time taken away from work and related expenses other than attorneys' fees [*Rawlings v. Dovenmuehle Mtg., Inc.*, 64 F. Supp. 2d 1156, 1164 (M.D. Ala. 1999)]. Such damages were rejected in *Katz v. Dime Savings Bank*, 992 F. Supp. 250 (W.D.N.Y. 1997) (non-pecuniary damages are not recoverable under RESPA). Even assuming *arguendo*

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Instead, in this Court, the Cardiellos again improperly attempt to inject a new argument. Now, the Cardiellos say that they should get statutory damages (as to which actual damages are not necessary) and that the decisions of the Courts below supposedly conflict with the statute's language allowing statutory damages where a "pattern" of violations is shown [Petition 17]. The Cardiellos did not raise that argument below. Moreover, no such pattern was pleaded or shown. A RESPA "pattern" requires more than a single violation, or even repetitive violations as to the same plaintiff. *Cortez*, 2000 U.S. Dist. LEXIS 5705 at *32 n.12.

In any event, the decisions below did not address the question of statutory damages; thus, there is no basis for the Cardiellos' statement that the holding below "conflicts" with the case law as to statutory damages [Petition at 17]. No issue on that matter requiring or warranting this Court's attention is presented for this Court.

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that this Court would consider such matters to be damages (which The Money Store respectfully submits should not occur), the Cardiellos did not allege them here.

The Cardiellos' pleading of their claim as a class action does not rescue their claim. They have not shown a basis for such a claim. But, in any event, the Cardiellos cannot qualify as class representatives since they themselves were not harmed by the alleged wrongdoing. *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 625-26, 117 S. Ct. 2231, 2250-51, 138 L. Ed. 2d at 714 (1997) ("class representative must be part of the class and 'possess the same interest and suffer the same injury as the class members'"); *Lewis v. Casey*, 518 U.S. 343, 354, 116 S. Ct. 2174, 135 L. Ed. 2d 606, 619-20 (1996) (same); *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 40 n.20, 96 S. Ct. 1975, 48 L. Ed. 2d 450 (1976) (same).

C. RESPA Does Not Require a Mea Culpa

The Petition contends, astoundingly, that this Court should hear their case because The Money Store supposedly "refuse[d] to admit its error" in seeking the money it was owed but declined to collect [Petition 17-18]. But, the statute, of course, does not require a mea culpa. It requires *either* "appropriate corrections" *or* an "explanation or clarification" [App. 53a-54a]. Here, The Money Store did both. It "corrected" the balance by deleting it; *and* it explained, in its July 17, 2000 letter and its earlier June 28, 1999 letter, why The Money Store believed its calculations were correct. Either sufficed. *Cortez*, 2000 U.S. Dist. LEXIS 5705, at *32.

It would distort the plain intent of the statute to subject The Money Store to a class action because, although it did what the Cardiellos wished (i.e. forgave the balance due), The Money Store did not also acknowledge that it had made an error when it did not believe it had done so. The salutary purposes of TILA and RESPA do not provide a justification for baseless actions by borrowers who are simply angry that their lenders do not agree with the borrower's view of the situation, especially against lenders who (like The Money Store here) have demonstrably acted in good faith.

POINT II.
THERE IS NO TILA ISSUE WARRANTING THIS COURT'S REVIEW

A. There Is No Issue on the Merits Here

The Cardiellos seek to raise a false issue on the merits. The Second Circuit did make a remark as to the merits [App. 2a]. But, the actual and principal ground for dismissal of the Cardiellos' TILA claim was that it is time-barred; so that the Cardiellos cannot assert a TILA claim even if they had one. However, the evidence on the motion also showed

that, as their counsel in effect admitted to the Second Circuit, the Cardiellos did not and do not have a claim under TILA.

As the Courts below recognized, TILA § 1638 the section at issue, is a disclosure statute, specifying the "required disclosure by [a] creditor" for "transactions other than under an open-end credit plan" [App. 58a]. *Morris v. Lomas and Nettleton Co.*, 708 F. Supp. 1198, 1203 (D. Kan. 1989) ("Congress enacted the TILA to ensure meaningful disclosures in consumer-credit transactions"). Accord: *Bartholomew v. Northampton Nat. Bank*, 584 F.2d 1288, 1296 (3d Cir. 1978). Thus, the District Court correctly noted [App. 7a]:

> [T]he Act seeks "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various terms available to him and avoid the uninformed use of credit."

Accord: *In re Ralls*, 230 B.R. 508, 515 (E.D. Pa. 1999). Section 1638 thus refers repeatedly, as the titles of its subsections state, to "disclosures"; and it details (in its several subsections) the "required disclosures", "form and timing of disclosures", etc.

As the District Court noted [App. 12a]:

> Plaintiffs' arguments reflect a basic misunderstanding about the breadth of TILA's application. Although remedial in their purpose, TILA's disclosure requirements are precise in their focus.

Section 1638 is not a catch-all dragnet for every perceived wrong by someone who happens to be a lender. The Cardiellos are improperly attempting to rewrite the statute and extend

it beyond its terms. Respectfully, that is a task (if it is to be done) for Congress, not the Court.[10]

There is no possible dispute that The Money Store complied with that section's requirements here. The Cardiellos' Complaint had alleged that The Money Store's TILA Disclosure Statement was inaccurate and incomplete because it didn't justify the balance that was still due on their loan at the end of its term. That was not so, as their counsel expressly admitted in his argument to the Court of Appeals [App. 23a-24a], quoted above. The TILA Disclosure Statement was not misleading; rather, it had expressly told the Cardiellos that they would incur such additional charges if they made their payments late. That, as The Money Store's letters to the Cardiellos had explained, was the reason why a balance was due from them.

In this Court, as they first did in the Second Circuit, the Cardiellos say that, in actuality, they had paid early and were owed a refund by The Money Store [App. 35a]. There is no such allegation in the Complaint; so that that matter is not properly before the Court. But, in any event, The Money Store's records had shown the opposite [App. 5a-6a]. Thus, the Record in and before the Second Circuit fully supports the conclusion, indeed shows, that no such claim would lie even if pleaded.[11]

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10. Thus, TILA does not apply to the Cardiellos' prior contention (apparently not pressed in the Petition) that The Money Store had failed to comply with its agreement with the FTC. The evidence in the Record shows indisputably that the Cardiellos are factually incorrect. But in any event, TILA does not address compliance with agreements (even with governmental agencies) made several years after a borrower's loan. The FTC Agreement was not, and did not constitute, an extension of credit, much less one for which new TILA disclosures were required.

11. As noted above, contrary to the Petition [p. 22], the FTC did not find that The Money Store had violated TILA § 1638, much

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B. The TILA Claim Is Barred by the Statute of Limitations

TILA § 1640, 15 U.S.C. § 1640, which provides the private right of action for alleged violations of that statute, expressly states (in subpart e thereof) that:

> [A]ny action under this section may be brought . . . within one year from the date of the occurrence of the violation.

15 U.S.C. § 1640(e). That is an explicit unambiguous statute of limitations for any claim asserted under TILA.

A TILA § 1638 claim is based on an allegedly false statement in the TILA Disclosure Statement delivered to a borrower at the closing of the loan. Every court addressing the issue has held that the "date of the occurrence of the violation" for such a claim is the date of the loan. *Rudisell v. Fifth Third Bank*, 622 F.2d 243, 246 (6th Cir. 1980) (TILA one-year statute of limitations runs from the date the loan is made, i.e. "when the promissory note is signed"); *Bartholomew*, 584 F.2d at 1296 (TILA statutory period begins when the loan transaction documents are executed); *Nembhard v. Citibank, N.A.* 1996 U.S. Dist LEXIS 20062 at *5 (S.D.N.Y. 1996) (same); *Morris*, 708 F. Supp. at 1203 (TILA one-year limitations period runs from "the date of the closing"); *Streib v. St. James Bank & Trust Co.*, 642 F. Supp 910, 912 (E.D. La. 1986) ("In a closed-end credit transaction . . . the date of the signing of the promissory note has been held to begin the running of the one-year period"). At bar, that was undeniably in 1985, 15 years before the

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less for the "identical practices" at issue here. The FTC had filed a complaint asserting that The Money Store had violated the statute by charging interest under the 365/360 method, i.e. interest for 365 days under a stated interest rate assuming a 360 day year. That claim was never adjudicated before the FTC or any court. Rather, the parties settled it with an express acknowledgment by the FTC that The Money Store denied any wrongdoing and that the settlement should not and would not be construed as an admission of any wrongdoing.

Cardiellos commenced their action, i.e. 14 years after the statute of limitations had run.

There is no continuing violation, even though the improper disclosure may remain uncorrected. *Rudisell*, 622 F.2d at 246 ("the credit transaction was completed when the Rudisells signed the promissory note."); *Van Pier v. Long Island Sav. Bank*, 20 F. Supp. 2d 535, 538-39 (S.D.N.Y. 1998) (after collecting and quoting decisions: "The case law is clear that the alleged TILA nondisclosure violation here occurred at the time of the loan in 1984, and the alleged continuing failure to provide TILA disclosures is not a 'continuing violation' for purposes of the one-year statute of limitations").[12]

C. The TILA Statute of Limitation Was Not Equitably Tolled

There is no basis, however, for equitable tolling here (as the Courts below correctly held) since the Cardiellos were admittedly on notice of their claim far more than one year before they sued; and, in any event, they did not and could not allege the prerequisites for equitable tolling: namely that they were misled as to their claim and that they did not discover it despite their due diligence to do so.[13]

The required elements of equitable tolling, as summarized in *State of New York v. Hendrickson Bros., Inc.*, 840 F. 2d 1065, 1083 (2d Cir. 1988), are that the plaintiff must show:

> (1) that the defendant concealed from him the existence of his cause of action; (2) that he remained

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12. The Cardiellos'' reliance on TILA § 1640(b) to argue that a violation of TILA § 1638 extends beyond the date of the loan [Petition 24] is incorrect. Subsection b provides an affirmative defense to a lender who, "within 60 days after discovering an error, . . . notifies the person concerned of the error". That is a defense on the merits to a timely claim, not a requirement for determining when the statute of limitations has run.

13. The Cardiellos did not plead that the statute of limitations should be equitably tolled, or any facts supporting equitable tolling.

> in ignorance of that cause of action until some point within [the applicable statutory period] of the commencement of his action; and (3) that his continuing ignorance was not attributable to lack of diligence on his part.

Accord: *Campbell v. The Chandler Assoc., Inc.*, 1997 U.S. Dist. LEXIS 3998 (N.D.N.Y. 1997) (same); *Butala v. Agashiwala*, 916 F. Supp. 314, 319 (S.D.N.Y. 1996) ("the doctrine of fraudulent concealment will not toll the limitations period unless both fraudulent concealment and due diligence are established").

The Cardiellos misleadingly state that "every Federal Circuit holding that equitable tolling applies to TILA has followed *Holmberg* [*v. Ambrecht*, 327 U.S. 392, 397 (1947)] or *Bailey v. Glover*, 88 U.S. (21 Wall) 342, 349-50 (1874) both of which conclude that affirmative concealment by the defendant is not required" [Petition 27]. That inaccurately describes the cases and, in any event, addresses only one possible type of the concealment required for equitable tolling. Indeed, as the two cases that the Cardiellos cite themselves show, some form of concealment (either active concealment *or* a self-concealing wrong) is necessary. Both cases dealt with *whether* equitable tolling is available for a TILA claim, *not when* it is. But, in discussing that issue, the Courts of Appeals in both cases expressly recognized that some form of concealment is necessary. Thus, in *Ramedan v. Chase Manhattan Corp.*, 156 F. 3d 499, 502 (3d Cir. 1998), the Court expressly quoted the reference in *Bailey*, 88 U.S. (Wall) at 34, to those two alternative ways of concealment (i.e. either "concealing a fraud, or . . . a fraud . . . that concealed itself"), and further explained that it concluded that equitable tolling should be available in a TILA case since it would be unfair to allow lenders who violate TILA "to avoid liability *if they successfully concealed* the violation from the debtor". 156 F.3d at 502 (emphasis added). The Court of Appeals in *Ellis v. General Motors Acceptance Corp.*, 160 F.3d 703, 706 (11th Cir. 1998), similarly explained that " 'equitable tolling' is the doctrine under which plaintiffs

may sue after the statutory period has expired *if they have been prevented from doing so* due to inequitable circumstances." (emphasis added)[14]

The Cardiellos also incorrectly complain that the Courts below held that, to "invoke" equitable tolling of a statute of limitations, the plaintiff must show that he/she was unable, despite due diligence, to learn of his/her claim *during the statute of limitations period* [Petition 3]. Specifically,

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14. *Holmberg v. Ambrecht*, 327 U.S. 392 (1947) does not stand for the contrary. Although there is language in that opinion that active concealment by the defendant is not necessary for equitable tolling of a statute of limitations, the Court did not address a possible self-concealing wrong. Moreover, the Court's remarks about active concealment are taken out of context by the Cardiellos. There *was* concealment in *Holmberg*. The plaintiffs had sued in equity on behalf of creditors of a defunct bank to collect an assessment due from the shareholders of the bank under the Federal Farm Loan Act. One of the shareholders sued was Charles Ambrecht; but, that case had been dismissed without prejudice on procedural grounds. Later, the plaintiffs learned that Ambrecht was holding stock actually belonging to another shareholder, Jules Bache, and sued Ambrecht and Bache. Bache contended that the statute of limitations and laches barred the action. As this Court expressly noted, "Jules S. Bache had concealed his ownership" of stock in the bank "under the name of Charles Ambrecht", thereby misleading the plaintiffs as to this possible claim for several years. 327 U.S. at 393. Therefore, no issue was presented as to the concealment element of equitable tolling of the statute of limitations. Rather, the issues were whether the statute of limitations applied to the equity claims and whether, in any event, the plaintiffs had exercised the requisite due diligence to warrant an equitable tolling. The Court ruled that fact questions were presented as to the plaintiffs' diligence or lack thereof. 327 U.S. at 396. The remarks on the concealment issue were *dictum*, whose significance must be judged in the context of the facts before the Court. Thus, other courts after *Holmberg*, like those cited above, have made clear that some form of concealment (i.e. either active concealment by the defendant or a self-concealing wrong) is necessary, as well as due diligence by the plaintiff, for there to be an equitable tolling of the statute of limitations.

the Cardiellos argue that it is unfair to have required them to realize they had a possible TILA claim within the first year after the loan (i.e. during the limitations period expressly provided in TILA § 1640) because the additional charges at issue supposedly were not known until the conclusion of the loan [Petition 3]. That misstates the facts, and ignores the law. The TILA Disclosure Statement expressly told the Cardiellos that they would incur additional charges if they were late in making their payments under the loan; thus, the additional charge was not first "disclosed at the loan's conclusion" [cf. Petition 3]. Moreover, it is well settled that the prerequisites for equitable tolling must occur "within the limitations period" itself [*see, e.g., In re Merrill Lynch Ltd. Partnerships Litigation*, 154 F. 3d 56, 60 (2d Cir. 1998)], since, if that were not so, as occurred at bar, the statute of limitations would have already innocently expired *before* there was even a basis to contend that it should be tolled on equitable grounds. This error by the Cardiellos is also the result of their "basic misunderstanding about the breadth of TILA's application" [District Court at App. 12a]. As shown above, TILA § 1638 is directed at disclosure at the time of the loan, not conduct thereafter [App. 8a, 12a]. The Cardiellos persist, nevertheless, in attempting to assert a TILA § 1638 claim on the basis of conduct (not disclosures) long after the loan had closed.

1. ***The Cardiellos were on notice of the basis for their claim*** — As shown below, the Cardiellos were on notice of their potential claim no later than 1992, more than eight years before they commenced this action. The Cardiellos' Complaint itself referred to The Money Store's 1991 agreement with the FTC. Under the FTC Agreement, the Cardiellos had been sent both a refund check and a letter [2d Cir. Jt. App., A 24-25 and A 41-49] advising them:

> We have enclosed a check for you because *you may have been charged more interest on your loan*

> *with The Money Store than you were told.* The Money Store has voluntarily agreed to an order by the Federal Trade Commission that requires the enclosed amount be sent to you.
>
> * * *
>
> If you have any questions about this letter, please call Pearl Turtletaub at the following toll free number: 1-800-221-9741 Ext. 318. Thank you for your attention.

Emphasis added. [2d Cir. Jt. App., A 25 and 49].[15] That plainly put the Cardiellos on notice of the possibility of a claim based on their loan eight years before the action was filed.[16]

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15. Since the FTC Agreement and its contents are referred to in the Complaint, they were properly before the Court and considered on defendants' motion. *See* discussion in Point III *infra*.

16. Although the Cardiellos contended that they did not receive the refund check sent to them as part of the FTC Agreement, the contemporaneous business records of The Money Store show that they did [2d Cir. Jt. App., A 24-25 and 41-48]. As part of the FTC Agreement, The Money Store was required to report to the FTC in 1992 (long before this action) who had and who had not been included in its performance of that agreement. As it reported, the Cardiellos were among the persons who *had* cashed checks and they were *not* among those persons who had received but not cashed checks [2d Cir. Jt. App., A 47-48, 55]. Those documents are admissible business records under Fed. R. Evid. 803(6). *Hardison v. Balboa Insurance Co.*, 4 Fed. App. 663, 669-70 (10th Cir. 2001) (limited citation permissible) (computer cancellation notice, template letter and other such record of mailing admissible business record); *United States v. DeGeorgia*, 420 F.2d 889, 892-93 (9th Cir. 1969) (computer records sufficient to show whether event occurred); *People v. Weinberg*, 183 A.D.2d 932, 933-34 (2d Dept. 1992) (computer print-outs generated after case began from information stored in computer before commencement of case are admissible business records).

Thus, even assuming *arguendo* that there is a basis for equitable tolling here (which, as shown next, is not correct), the Cardiellos' claim is time-barred. *Katz v. Bank of California*, 640 F.2d 1024 (9th Cir. 1981), *cert. denied*, 454 U.S. 860 (1982) (dismissal under TILA one-year statute of limitations where letter had put plaintiff on notice of allegedly undisclosed facts); *Van Pier*, 20 F. Supp. 2d at 540 (no equitable tolling where plaintiff was aware of violation more than one year before action commenced); *Streib*, 642 F. Supp. at 913 (equitable tolling runs from "the date on which the borrower discovers or had reasonable opportunity to discover the fraud involving the complained of TILA violation"); *In re Woolaghan*, 140 B.R. 377, 382-83 (W.D. Pa. 1992) (no equitable tolling where plaintiffs "had reasonable opportunity to discover the exact nature of their loan").

2. ***There was no concealment*** — The documents referenced in the Complaint showed, beyond dispute, that The Money Store did not actively conceal that borrowers such as the Cardiellos would incur additional interest charges if they were late in making their payments. To the contrary, the TILA Disclosure Statement itself stated that the amounts listed for the monthly payments assume "that you will pay the monthly installments when due" and that "late payment of the monthly installments will increase the finance charge and total of payments . . . " [2d Cir. Jt. App., A 55 and 58].[17] The Cardiellos could also determine that from the payment book and other periodic statements that they admittedly received from The Money Store during the course of their loan. Those facts negated any allegation of active concealment. *Butvin v. Doubleclick, Inc.*, 2000 U.S. Dist. LEXIS 8772 at **20-21 (S.D.N.Y. 2000) (fraud claim that plaintiff was promised unrestricted stock options held time-barred since

17. Further, Mr. Cardiello had written to The Money Store in 1997, three years before this action was filed, showing that he was aware that his late payments would incur the additional charges about which the Cardiellos complain [2d Cir. Jt. App., A 59-61].

other documents received at time of employment had put plaintiff on notice as to restrictions); *Streib*, 642 F. Supp. at 913 (no equitable tolling where borrower had a payment book and had made earlier inquiries regarding other aspects of loan at issue).

3. ***The alleged wrong was not a self-concealing wrong*** — It is and was also clear that this action does not involve a self-concealing wrong. A self-concealing wrong is not shown merely by showing a violation of the statute. As explained in *Pettola v. Nissan Motor Accept. Corp.*, 44 F. Supp. 2d 442, 450 (D. Conn. 1999), citing cases:

> In TILA cases, the courts have held uniformly that fraudulent conduct *beyond* the nondisclosure itself is necessary to equitably toll the running of the statute of limitations. [citations omitted]

Emphasis added. The District Court thus correctly concluded [App. 10a]:

> These holdings make good sense because if the very nondisclosure or misrepresentation that gave rise to the TILA violation also tolled the statute of limitations, the effect of the statute of limitations would be nullified.

Other courts have similarly reasoned. *See, e.g., Hughes v. Cardinal Fed. Sav.*, 566 F. Supp. 834, 838 (S.D. Ohio 1983) ("otherwise, the one-year statute of limitations would be tolled in almost every TILA action in which a non-disclosure violation was found and the statutory limitations provision would be a nullity"). *See also*: *Hentosh v. H.M. Finch University*, 167 F. 3d 1170, 1175 (7th Cir. 1999).

The self-concealing wrong cases cited by the Cardiellos are distinguishable. Unlike a bid-rigging or kickback scheme,

as involved there[18], the alleged wrong at bar is not inherently self-concealing. The Cardiellos also admittedly received monthly and annual statements showing what they had paid and still owed, as corroborated by Mr. Cardiello's 1997 letter. *Streib*, 642 F. Supp. at 913.

4. ***The Cardiellos did not show the requisite due diligence on their part*** — Even assuming *arguendo* that concealment is *not* required for equitable tolling, the Cardiellos have failed to show the other prerequisite of equitable tolling, viz. that they were unable, despite due diligence, to learn of their claim. *Stone v. Williams*, 970 F.2d 1043, 1048-49 (2d Cir. 1992) ("fraudulent concealment does not lessen a plaintiff's duty of diligence" and "plaintiff is charged with whatever knowledge an inquiry would have revealed"); *Bowers v. Transportacion Martina Mexicana, S.A.*, 901 F.2d 258, 264 (2d Cir. 1990) ("even where concealment exists, the party seeking the benefits of equitable tolling must have acted reasonably to discover the facts and to protect its rights"); *In the Matter of Mtr. of the Mediators, Inc.*, 190 B.R. 515, 525 (S.D.N.Y. 1995) ("to establish the propriety of equitable tolling based on self-concealing fraud, 'plaintiff's due diligence in attempting to discover the fraud is imperative'"); *Billick v. Eagle Elec. Mfg. Co.*, 807 F. Supp.

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18. *Weil v. Long Island Savings Bank*, 77 F. Supp. 2d 313, 326 (E.D.N.Y. 1999), involved a kickback scheme whereby a bank was given a portion of legal fees paid by the borrowers, and thus a wrong beyond an inaccurate disclosure in the TILA Disclosure Statement. *In re Consolidated Insurance Fee Litigation*, 195 F.R.D. 684, 693-94 (N.D. Ala. 2000), involved a fraud scheme to charge borrowers fees that were not being used for the purposes stated in the TILA Disclosure Statement and thus also went beyond the alleged inaccuracy in the TILA Disclosure Statement. It also involved affirmative conduct to cover up the fraud; indeed, the Court there specifically noted that "plaintiff has established that defendants concealed from him the alleged fact that the NSI fee was not being used for the purpose indicated in the loan documents".

243, 254 n.8 (E.D.N.Y. 1992) ("a long series of decisions agree that a plaintiff must *always* show that she acted reasonably to uncover the fraud"). *See also Santa Maria v. Pacific Bell*, 202 F.3d 1170, 1179 (9th Cir. 2000), cited by the Cardiellos, where the Court held that equitable tolling was not appropriate since the plaintiff had "sufficient information to know of the possible existence of a claim", and explaining that to allow otherwise would "trivialize the statute of limitations by promiscuous application of tolling doctrines".

As the District Court correctly explained, the Cardiellos could have determined the basis for their claim by merely comparing the loan documents with their account statements. Indeed, Mr. Cardiello's 1997 letter showed that that is what he was doing. Even ignoring the ease of recognizing the claimed discrepancy between the loan documents and the interest being paid from their account statements, the Cardiellos were undeniably on inquiry notice of their claim in 1992 when they received The Money Store's 1992 letter pursuant to the FTC agreement telling them that they "may have been charged more interest on your loan with The Money Store than you were told" [2d Cir. Jt. App. A 49]. Due diligence required that the Cardiellos follow up on those clear signals promptly. *See, e.g., Butala*, 916 F. Supp. at 318. But, they waited years to file their claim, long after the statute of limitations had run.

POINT III.
THE COURTS BELOW DID NOT USE IMPROPER PROCEDURES

The Cardiellos incorrectly complain that the Courts below followed improper procedures [Petition 29-30]. In actuality, just the opposite was and is true.

The District Court did *not* decide the merits of the TILA claim, and the Second Circuit did not base its affirmance on the merits. Rather, the decisions below as to TILA were based on and fully justified under the TILA statute of limitations. The District Court was entitled to reject allegations in the Complaint that were erroneous legal assertions or demonstrably incorrect factual statements. 5A Wright & Miller, *Federal Practice & Procedure* § 1357 at 315-18 (1990) (the Court need not accept as true "legal conclusions, unsupported conclusions, unwarranted inferences, unwarranted deductions, footless conclusions of law or sweeping legal conclusions cast in the form of factual allegations"); 2 *Moore's Federal Practice*, § 12.34[1][b] at 12.61f and n.13 ("while facts must be accepted as alleged, this does not automatically extend to bald assertions, subjective characterizations, or legal conclusions"); *Bender v. Suburban Hosp. Inc.*, 159 F. 3d 186, 192 (4th Cir. 1998) (rejecting pleaded allegation where other parts of complaint "make it obvious" that the allegation was wrong); *In re Sofamor Danek Group, Inc.*, 123 F. 3d 394, 400 (6th Cir. 1997), *cert. denied*, 523 U.S. 1106 (1998) ("we need not accept as true legal conclusions or unwarranted factual inferences"); *First National Bank v. Gelt Funding Corp.*, 27 F.3d 763, 777 (2d Cir. 1994) (rejecting conclusory allegation based on "faulty" premise since "unwarranted deductions of fact are not [deemed] admitted" on Rule 12(b)(6) motion); *Finkel v. Putnam Convertible Opportunities & Income Trust*, 1997 U.S. Dist. LEXIS 9420 at **10-11 (S.D.N.Y. 1997), *aff'd*, 162 F.3d 1147 (2d Cir. 1998) ("a motion to dismiss does not require courts to ignore contradictions" between the allegations of the

Complaint and facts stated in documents that the Court may consider on the motion).

The Courts below did not rely on matters outside the pleadings. Rather, they followed the sound and established rule that documents referenced in the pleading are deemed part of it on a Rule 12(b)(6) motion. *Cortec Industries Inc. v. Sum Holding L.P.*, 949 F.2d 42, 47 (2d Cir. 1991), *cert. denied*, 503 U.S. 960 (1992) (specifically so holding); *Four Finger Art Factory, Inc. v. Dinicola*, 2000 U.S. Dist. LEXIS 18998 at *4 (S.D.N.Y. Jan. 9, 2001) ("the court may consider" not only "documents referenced in the complaint", but also those "that plaintiff knew of and relied on in bringing suit"). Accord: *Rothman v. Gregor*, 220 F.3d 81, 88 (2d Cir. 2000) (same); *Brass v. American Film Technologies, Inc.*, 987 F.2d 142, 150 (2d Cir. 1993) (same).

The Courts below did not take "judicial notice" of facts outside the record. Rather, they followed the sound and established rule that a court may consider documents which the Complaint shows are pertinent but which the plaintiff has not made part of it; and it should "decline to close our eyes" to such documents. *I. Meyer Pincus & Assoc. v. Oppenheimer & Co.*, 936 F.2d 759, 762 (2d Cir. 1991); 5 Wright & Miller, *Federal Practice & Procedure* § 1327 at 489 and n.15 (when "plaintiff fails to introduce a pertinent document as part of his pleading, defendant may introduce the exhibit as part of his motion attacking the pleading"); *Finkel*, 1997 U.S. Dist. LEXIS 9420 at ** 10-11 (same).

CONCLUSION

The Petition should be denied.

Respectfully submitted,

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